

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v.-

HAJI NAJIBULLAH,  
a/k/a “Najibullah Naim,”  
a/k/a “Abu Tayeb,”  
a/k/a “Atiqullah,”  
a/k/a “Nesar Ahmad  
Mohammad,”

Defendant.

14 Cr. 401 (KPF)

**PROTECTIVE ORDER WITH**  
**RESPECT TO CERTAIN**  
**DISCOVERY**

KATHERINE POLK FAILLA, District Judge:

This matter came before the Court on the Government’s motion (“Government Motion”), exhibits, and the declarations of various Government officials (collectively, the “Government Submission”). The Government Submission was filed *ex parte*, *in camera*, and through the Classified Information Security Officer on September 2, 2022. The Government Submission sought a protective order, pursuant to Section 4 of the Classified Information Procedures Act (“CIPA”) and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, regarding disclosure of certain information.

On March 1, 2023, the Court entered a protective order (the “March 1, 2023 Order”) (i) authorizing the deletion of certain classified materials outlined in the Government Submission; (ii) approving several substitutions of classified material proposed by the Government; and (iii) carving out for further consideration by the Court certain classified materials described on pages 94 and 95 of the Government Submission (the “Outstanding Classified Materials”).

On April 28, 2023, the Government filed a supplemental submission *ex parte* through the Classified Information Security Officer concerning the Outstanding Classified Materials (the “Supplemental Government Submission,” and together with the Government Submission, the “Government Submissions”). After *ex parte*, *in camera* consideration of the Government Submissions, this Court finds:

1. That the Outstanding Classified Materials contain classified information that requires protection against unauthorized disclosure. That information is described with particularity in the Government Submissions.

2. The head of the department that has control of the classified information contained within the Outstanding Classified Materials, after actual personal consideration, has lodged the state secrets privilege with respect to that classified information.

3. Disclosure of the Outstanding Classified Materials to the defense or the public could reasonably be expected to cause serious damage to the national security.

4. The Outstanding Classified Materials are not discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, or Rule 16 of the Federal Rules of Criminal Procedure, and are not helpful to the defense, that is, useful to counter the Government’s case or bolster a defense, as required under *United States v. Aref*, 533 F.3d 72, 78 (2d Cir. 2008).

Accordingly, it is hereby:

ORDERED that, pursuant to the instant order and the March 1, 2023 Order, the Government Motion is granted, and the classified information described in the Government Submissions, including the Outstanding Classified Materials, need not be disclosed to the defense;

ORDERED that the Government Submissions are hereby sealed and shall remain preserved in the custody of the Classified Information Security Officer, in accordance with established court security procedures, until further order of this Court; and it is further

ORDERED that the Clerk of Court unseal the March 1, 2023 Order at docket number 78.

SO ORDERED.

Dated: May 23, 2023  
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

---

KATHERINE POLK FAILLA  
United States District Judge